



香港大學

THE UNIVERSITY OF HONG KONG

## Laidlaw Scholars Programme 2020-21

**Research Proposal**

Guidelines on how to prepare a research proposal:

- Identify a project of your choice and discuss the topic with your academic supervisor at HKU.
- Prepare a research proposal including the following details:

1. Title of research project:

The Law of Frustrated Contracts in the Current Pandemic

2. Research question:

Whether the law of frustration and its remedial consequences is fit for purpose during the COVID-19 pandemic?

3. Summary of the work to be undertaken by the applicant (e.g., background information, location, history, context, limitation, methodology, and timeline)

In the plight of the unprecedented COVID-19 pandemic, social distancing restrictions have rendered contractual performance onerous, e.g., global supply chains are disrupted. The risks of breach of contract could force businesses into liquidation, triggering vicious cycles of debt. Apparently affected parties can rely on the common law doctrine of frustration, matured in the early 20<sup>th</sup> century, to excuse performance, where the unanticipated supervening event renders performance impossible or radically different from the contractual purpose. And yet, COVID-19 in itself does not necessitate frustration, nor does it lower the high threshold of frustration, especially due to *force majeure* clauses in agreements.

If the situation allows, I would like to undertake this research project at the UCL Faculty of Laws. The gist of this research project is whether the law of frustration should be reformed to suit COVID-19 circumstances. Relevant issues of inquiry encompass the legal threshold, apportionment of losses, and alternative remedies. For the first two weeks, I plan to extract possible disputes and discussions of frustration from media and legal databases, from which I will analyse the parties' legal positions and concerns in relation to the construction of *force majeure* clauses and applicability of relevant case law. Based thereon, I will compose an article on the application of the doctrine of frustration to COVID-19-related contractual disputes, comparing different remedial approaches, and formulating reform proposals from comparative jurisprudence. Finally, a presentation poster will be produced to summarise my arguments and findings. Due to the commercial uniqueness of contracts, this project will shed light on general principles of legal policy, instead of the assessment of unjust enrichment in each case. I will take into account the fact that economic duress could as well influence case outcomes besides remedies.

4. Details of supervision arrangements (e.g., how are you going to conduct your research? Will focused group/survey be conducted? How often will you meet your supervisor? Is laboratory work required? Etc.)

**Notes:**

If you wish to pursue a research opportunity at University of Leeds or University of St. Andrews, please name three professors with whom you would like to conduct your research. Once you are shortlisted for the award, the Horizons Office will match your proposal to a potential host supervisor according to your preferences.

Dr Niamh Connolly at UCL is in charge of this research project. After the proposal was formulated, I would like to consult her opinion on my research timeline and discuss the project with her beforehand if I am shortlisted for the award. This project will be mostly based on primary sources like statutes, case law, and government consultation papers, and secondary resources like journal articles and commentaries, government consultative papers, news reports, etc. Based on these materials, I will extract and identify common disputes and legal issues of possible litigants concerning frustration during the COVID-19 pandemic. Meanwhile, I will keep myself in pace with new legislation and cases on frustration so that I can apply the law on different facts to ascertain the relevant legal position.

Subject to Dr Connolly's agreement, I hope I could report to her on a weekly basis, so that she could keep track of my work. Throughout the research, I would like to seek her guidance on contract theory, jurisprudence, comparative contract law (especially the position in English law) and other areas of law that I am not familiar with. Because the article may inform teaching or disseminated publicly, Dr Connolly is more than welcomed to make recommendations on its appropriate style and format. Her comments would be invaluable to my efforts to present this paper in a scholarly but readable manner.

No laboratory work is required.

Name of applicant: Tam Ching Hin Anfield



Signature of applicant: \_\_\_\_\_ Date: 22 January 2021